

Testimony of

# Fonza Luke

December 12, 2007

Testimony of Mrs. Fonza Luke  
of Birmingham, Alabama

On the Arbitration Fairness Act of 2007 (S. 1782)  
Before the Subcommittee on the Constitution  
Committee on the Judiciary  
United States Senate

December 12, 2007

Chairman Feingold and distinguished Members of the Subcommittee, thank you for the invitation to testify at this hearing about my experience with mandatory arbitration as an employee. I would also like to acknowledge my attorney, Mark Elovitz, without whom I would not have the opportunity to be here today.

I started working as a licensed nurse for Baptist Health Systems (BHS) Medical Center Princeton in 1971. For almost 30 years, I was a dedicated employee who received the highest performance ratings from the doctors I worked with every day. When the hospital needed me to work extra days and hours because of staffing shortages, I came in, including once when I worked almost every day of the year to give them the help they needed. Whenever the hospital offered new training or skills development, I took advantage of it so I could do my job better.

In November 1997, I was required to attend a meeting of hospital employees where I was given a copy of a new "Dispute Resolution Program." The other employees and I were told that BHS was starting this new program, that we would have to give up our right to go to court if we had legal claims, that all claims would be brought to binding arbitration, and that this program would take effect the following January. I refused to sign this agreement, because I did not want to give up my rights. I was told twice that if I didn't sign, I would be fired, but both times I refused. And I was not fired at that time.

About three years later, in early 2001, the hospital did fire me, after I returned from a continuing education class in Atlanta. The hospital's human resources director told me that I was being fired for "insubordination" after almost 30 years of working for BHS. I was devastated because I never thought that I would lose my job after all those years.

At that time, I went to see Mr. Elovitz. I believed that BHS fired me because of my race and age. I was 59 years old when I was terminated. The only things I did that were "insubordinate" were things that younger, white employees did all the time without getting fired. With the help of my lawyer, I filed race and age discrimination claims with the U.S. Equal Employment Opportunity Commission, and then in federal court.

But BHS asked the federal court to dismiss my case because, they said, I had agreed to bring all such claims to arbitration. I told the federal court that I never did sign the arbitration agreement and never gave up my right to go to court. But the federal court said that BHS could force me to arbitrate, just because I had kept working in my job after simply BHS showed me the arbitration agreement. When I appealed the federal court's decision, the appeals court ordered me into arbitration.

The arbitrator was chosen by process of elimination from a list that was composed heavily of defense lawyers. According to my lawyer, with that list of arbitrators, it was impossible for me to get someone who was even in the middle of the road, much less someone who might be sympathetic to employees. As a result, my claims of

discrimination and retaliation were denied, and I got no relief whatsoever. I don't think the arbitrator even looked at my side of the story.

The result? I have received no relief or settlement from BHS for having discriminated against me. Today, I have to work two jobs to make as much as I did at BHS.

I wasn't even allowed to bring the evidence of discrimination before a fair and impartial judge or a jury of my peers. I did everything I could to keep my right to go to federal court, but the courthouse doors were closed when I got there.

Thank you again for listening to my story.